1949

Examined

File No. S.Bij 6/49

Legal Department

A BRANCH

Subject:— Suits Bijapur

Civil Suit No. 22 of 1948

Venkatesh Bhimarao Kulkarni -- Plff

Vs.

(i) The Province of Bombay
(ii) Rayangouda Chandangouda Patil } -Defts.

For a declaration of Plff's title to a land which was declared to be of Govt.'s ownership in an enquiry under sec. 37(2) of the Land Revenue Code.

P. 22-E

S.Bijapur 6/49

File No.

Gen. 124—BSB—1,00,000—8-49—20.

S.Bij 6/49

CONTENTS.

Legal Department File No. S. Bij. 6/49.

Sr. No.	Compilation No.	Subject	Pages.
		Suits Bijapur.	
		C. S. No. 22 of 1948.	
		V. B. Kulkarni — Pltf.	
		V/s	
		1) The Province of Bombay.	
		2) R. C. Patil.	
		Defts.	
		For a declaration of the Pltf's title to a land.	
1	Printed G.R.L.D. 4487 23rd April 1949	Sanctioning the defence of "	1
2)	U.K.L.D. 12812 7th Sep. 1950	Recording the result of the suit	

C. S. No. 22 of 1948.

In the Court of the Civil Judge, (Sr.Dn.)
Bijapur.

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1. Venkatesh Bhimrao Kulkarni Brahmin,
Age 50, Pensioner of Nagathan Tal.
Bijapur. ... ... Plaintiff.

Vs.

1. The Province of Bombay.

2. Rayangouda Chandangouda Patil,
Lingayat, age 40, agriculture of
Nagthan Tal. Bijapur. ... Defendants.

Herein the plainfiff begs to submit as under ::

1. An open site measuring 82 feet east west by 10½ feet south north situate at Nagathan, Tal. Bijapur surrounded by a public pathway and beyond that Shetteppa Talwar's house to east, a public pathway and beyond that deft No.2's house to the south, a public pathway to the west and plff's residential house to the north belongs to the plff and is in his possession.

2. The said open space and the adjoining house to the north fell to the share of the plaff in a family partition that a took place in the year 1938 and since then he is exclusively making wahiwat of it. After the partition he rebuilt the old southern wall of his house by opening a window and a mori in the places in which they pre existed and he wanted to construct a building and a compound wall as well on the open site in question to which deft No.2 objected. He happens to be an

an owner of house situate on the southen side of the suit open site with an open site belonging to the Govt. measuring about 66 feet intervening and part of which is used as a public road or path-way. He objected saying that the entire open space in front of his house upto the suit open site belongs to him though actually used by the public from time immedmorial and not to Govt. and that the suit open site belongs to the Govt and not to the plff and is used By the public as a way. The plff therefore made an application to the Mamlatdar Tal. Bijapur and he, after an inquiry under Sec.37 Land Revenue Code made a report to the Grant Officer, N.D.,Bijapur. Then it was decided on 4-10-1943 against the plff and was held that the suit site belonged to the Govt and an appeal was preferred to the Collector Bijapur who confirmed and order of the Grant Officer on 21-12-1945. Ultimately an appeal was preferred to the Rev. Tribunal but the order of the lower Court was confirmed there also on 23-12-1946. Hence plff intends to bring a suit against the above mentioned defts for declaration that it is of his ownership and in his possession and also for permanent injunction not to - disturb the same.

3. The open site in question ever belonged to the plaff and his ancestors and they have enjoyed the same from time immemorial. It has a foundation of wall abutting the pathway now used by the

the public. There is a small reservoir in the suit open site as old as the foundation and the residential house adjoining the plff's house. This suit site is not in level with the adjoining Govt. site now used by the public nor there are any traces of a pathway on it such mark as are clearly beyond the site in question. The plff's family has dealt with this property as full owners forever and none else.

4. The suit site has been used by plff and his ancestors for more than 100 years openly, peaceably and without interuption uptil now and hence he is the owner of the said property, in the alternative by adverse possession as well.

5. The cause of action for this suit against deft No.1 has arisen on 23-12-1946 when the Rev. Tribunal ultimately decided against the plaff holding the suit site as belonging to Govt. Deft No.2 is added as a formal party as he is interested in denying the plaff's claim and supporting that of deft No.1.

6. Notice of this suit under section 80 C.P.C. is given to deft No.1 and this suit is filed after the expiration of two month's time since the said notice.

7. This suit is filed for declaration that the plff is the owner of the suit site and also for a consequential relief of permanent injunction against both the defendants not to obstruct the peaceful enjoyment of the same and building operations to be undertaken etc., by the plaintiff. Hence Court Fee of Rs.5/- (Sec.

 7 + 7 45-49

(Section 7-4-c of Court Fee Act) is paid. The valuation for purposes of jurisdiction and pleaders' fees is Rs.50/-.

9. The plaintiff prays that:-

1. It should be declared that the plff *the owner of* the suit open site for *the reasons stated in paras 2 to 4 above.*

2. *a permanent injunction be granted against deft not to obstruct plff's* possession and peaceful *enjoyment of* the same by him.

3. A permanent injunction be issued to them not to obstruct the building operations on the suit site to be undertaken by plff hence forth

4. The costs of this suit be granted to plaintiff from the defendants.

Date. Sd. V.B.Kulkarni,

I, venkatesh Bhimarao, Kulkarni, Brahmin, Age, Pensioner of Nagathan, do hereby affirm that what is stated in paras 1 to 9 above are true to the best of my knowledge and belief.

Date.

Sd. V.B.Kulkarni,

Sd. R.N.Kavi,

Pleador.

9 13

List of important documents referred to in clauses (d) and (e) of the report under Rule 118 of the Law Officers Rules.

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1. Hand sketch at page 3 of file No. I.
2. Gharbasti map and its list (page 111 and 113 of file No. I).
3. Notes of Inspection of Prant Officer dated 11-9-43 (page 145 of file No. I).
4. Order under Section 37(2) L.R.C. of the Prant Officer (pages 117 and 119 of file No. I).
5. Order of Collector in appeal (page 35 of file No. II).
6. Order of the B.R.T. (page 127 of file No. I).

for Collector of Bijapur.

1-1-1949.

Bijapur Suit No.22 of 1948.

This is a suit for a declaration of the plaintiff's title to a land which was declared to be of Government ownership in an inquiry under section 37(2) of the Land Revenue Code.

Defence of the suit may be sanctioned on the lines of the appended brief.

5/2/49

R L A R 5/2

Secy (R.D.) 8.2.49

REVENUE DEPARTMENT SECRETARIAT, BOMBAY.

7/2/49 B

13

Civil Suit No. 22 of 1948.

In the Court of the Civil Judge Senior Division,Bijapur.

1. Venkatesh Bhimarao Kulkarni plff.

Vs.

1. The Province of Bombay

2. Rayangouda Patil defts.

The following is the written-statement of defendant No.1:-

(1). The plaintiff's claim of ownership to the suit property is denied.

(2). It is denied that the site is of plaintiff's ownership and has been in his possession and that of his predecessors continuously for more than 100 years. His claim on the basis of adverse possession is not correct and hence denied.

(3). The averments in para 1 to 4 of the plaint regarding ownership and adverse possession are not correct. The Revenue authorities have held on ~~the~~ enquiry that the suit site belongs to Government. That decision is binding on the plaintiff.

(4). The plaintiff is not entitled to any relief.

(5). It is therefore submitted that the suit fails and must be dismissed with costs.

District Government Pleader,Bijapur

I, K.K.Rao,Esquire,M.A.LL.B., District Government Pleader,Bijapur affirm that what is stated in paraslto 5 is true according to the information received and believed to be true.

District Government Pleader,Bij

Civil Suit No.22/48.
Ex.No.22.

3: 139

Issues..

1. Whether the plaintiff proves his title to the suit property ?

2. Whether he was in possession at the date of suit ?

3. Whether the plaintiff has perfected his title by adverse possession ?

4. Whether the suit is tenable ?

5- Whether the plaintiff is entitled to the declaration and injunction sought ?

6. Whether the suit is time barred ?

7. What order ?

Sd.

10-6-49. Civil Judge,Sr.Dn.Bijapur.

Suits.

Bijapur.

For a declaration of the Plaintiff's title to a land which was declared to be of Government's ownership in an enquiry under section 37 (2) of the Land Revenue Code.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 4487.

Bombay Castle, 23rd April 1949.

Letter from the Collector of Bijapur, No. L.A.W. 183, dated the 11th January 1949—

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

Civil Suit No. 22 of 1948.

Venkatesh Bhimarao Kulkarni	...	...	...	Plaintiff;
versus.				
The Province of Bombay	...	...	}	Defendant.
Rayangouda Chandaugouda Patil	...	...		

Claim—Rs.

Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

Memorandum to the District Government Pleader, Bijapur, No. 1608, dated the 10th February 1949—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

original

G. R., No. 4187, L. D., dated 23rd April 1949.

To

*The Revenue Department,
*The Commissioner, Southern Division,
*The Collector of Bijapur,
*The Secretary, Bombay Revenue Tribunal,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1949.

Copy forwarded for information and guidance to

Submitted after issue
File in S. Bijapur/49
29-12-49
(new)

BIJAPUR CIVIL SUIT No. 22 OF 1948.

Chronological Statement of Facts.

The suit is for a declaration of the plaintiff's title to a strip of land 82' × 10½' situated between the houses of the plaintiff and defendant No. 2 in the village of Nagathan, taluka Bijapur.

2. The disputed land was declared to be of Government ownership by the Prant Officer in an inquiry under section 37 (2) of the Land Revenue Code. His order was confirmed in appeal by the Collector on 21st December 1945 and by the Bombay Revenue Tribunal on 23rd December 1946.

File I p. 117
File II p. 35

File II p. 127

3. On 30th October 1947 the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 19th January 1948 he filed the present suit in the Court of the Civil Judge, Senior Division, Bijapur.

Grounds of Defence.

The house of the plaintiff is shown in the sketch, dated 18th August 1943. The house of the defendant No. 2 is to the south of the plaintiff's house. There is an open space between these two houses and it is admitted both by the plaintiff and the defendant No. 2 that this open space includes a lane or a foot-path belonging to Government. According to the defendant No. 2 this lane is bounded by the southern wall of the plaintiff's house and the foundation of an old wall belonging to the defendant No. 2 to the north of his house. The situation is clarified in the sketch made by the Prant Officer in his notes of inspection, dated 11th September 1943. The plaintiff on the other hand maintains that the foot-path is included in the area of the defendant No. 2.

File I p. 25

File I p. 115

2. The Prant Officer personally inspected the site. His inspection revealed that there were foundations of an old wall deep in the ground to the north of defendant No. 2's house and that there were old foundations at three places perpendicular to old wall which show that there must have been old walls in that open space. Beyond the perpendicular foundations there are bastions to the east and west so that there is no possibility of the foot-path having existed on the open space to the south of the old wall. There are also grain pits in that space. Hence, the only land that could have been used as a foot-path is the land in dispute.

3. The Prant Officer has not attached any importance to the oral evidence led by both the parties. The partition deed of 1938 on which the plaintiff relies is a recent document and was the result of the family partition. The recitals in such a document to which Government was not a party cannot be given much weight.

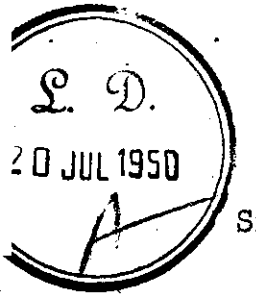
4. It must therefore be urged that the suit fails and must be dismissed with costs.

No. 457 of 1950.
Date:- 18-7-50

To

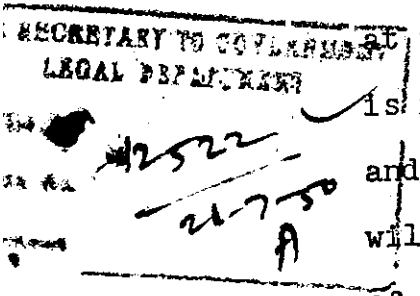
The Remembrancer of Legal Affairs,
Bombay No.1.

Subject:- Bijapur C.S.No. 22 of 1948.
Presence of D.G.P. at the
Local Inspection.



Sir,

I have the honour to state that court has made an order that the Government Pleader should be present at the Local Inspection. The date for the Local Inspection is not yet fixed. Deft No.2 has appeared through a pleader and the said pleader will be present when the learned Judge will visit the suit site. I do not think that the presence of the Government Pleader is necessary.



If you think that I should be present as per orde of the Court orders may be issued to me and sanction may also be accorded for the expenses to be incurred in that connection.

P.T.O.

Early orders may be issued to me. A copy of the order of the Civil Judge is herewith sent.

Yours faithfully

12.5.22
21-7-50.

Dist.Govt.Pleader,Bijapur.

Sabitar. with bks. (S. Bijapur 6/49)

21-7
H.S.

Please see the ... letter regarding ... Court wants to ... with the ... it is obvious ... help ... present ... I do ... why ... wants to pay to ... "esteem" ... T.A.

P.L.

A/2 RK 24/7

Civil Suit No.22 of 194[illegible]

ORDER.

ıri Kavi for the plaintiff has invited the Court to visit the suit site. I am inclined to comply with his request because the D.D.C. who held the enquiry visited the sit and the Collector also visited the suit site. The D.D.C. has placed on record his notes of local inspection and mainly ~~kwkkw~~ reference to his notes of local inspection the cross-examinatio has been directed. Under the circumstances, as this is an important suit between Government and the Plaintiff involving a public high way, I think it is necessary that the Government pleader and the other pleaders should be present when the Court visits the suit site.

Sd. A.C.Sequeira.

July 7,1950.

Civil Judge,Sr.Dn.

" True Copy "

Dist.Govt.Pleader,

47

23

T.L.A

Received on 16-1-1948. Decided on 1-8-1950.

Registered on 19-1-1948. Duration 2Years 6 Months 12 Day

In the Court of the Civil Judge, Sr. Dn.,

At Bijapur.

Civil Suit No. 22 of 1948. Exh.

Pleaders

Shri. R.N.Kavi

1. Venkatesh Bhimarao Kulkarni of Nagathan Tal. Bijapur. ... Plaintiff.

Vs.

Shri. K.R.Rao 1.

1. The Province of Bombay, through Collector of Bijapur.

Shri. M.C.Angadi for Deft. 2.

2. Rayagouda Chandanagouda Patil of Nagathan Tal. Bijapur. ... Defendants.

Claim Rs.

Judgment.

Suit for a declaration of title and a direction to the defendants not to interfere with hi possession and enjyment of the plaint site.

2. The plaint is based on the allegations that the vacant site in question is of the plaintiff's ownership, that it forms part of his house proprrty that defendant 2 interfered with his possession,

that the plaintiff made an application to the Mamlatdar, that his case was regarded with disfavour by the Prant Officer, that he preferred an appeal, that the Collector dismissed his appeal, that the Revenue Tribunal also dismissed his appeal, that in consequence this regular suit is brought, that he and his ancestors have been in occupation of the site for more than 100 years and that the cause of action arose on 23-12-1946 when the Revenue Tribunal dismissed his appeal.

3. The Government of Bombay is joined in the suit as defendant 1. The points taken on behalf of the Government of Bombay are that the plaintiff is not the owner of the site, that the site is of the ownership of Government and that a finding has been given to that effect after a proper inquiry.

4. Defendant 2 in his written statement Exh.11 contends that the plaint allegations are untrue and that the suit is time-barred.

5. The following issues were framed in the case :-

1. Whether the plaintiff proved his title to the suit property ?

2. Whether he was in possession at the date of suit

3. Whether the plaintiff has prefected his title by adverse possession ?

4. Whether the suit is tenable ?

5. Whether the plaintiff is entitled to the declaration and injunction sought ?

6. Whether the suit is time-barred ?

7. What order ?

6. My findings are :-

1. No.

49

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2. No.

3. No.

4. Does not arise.

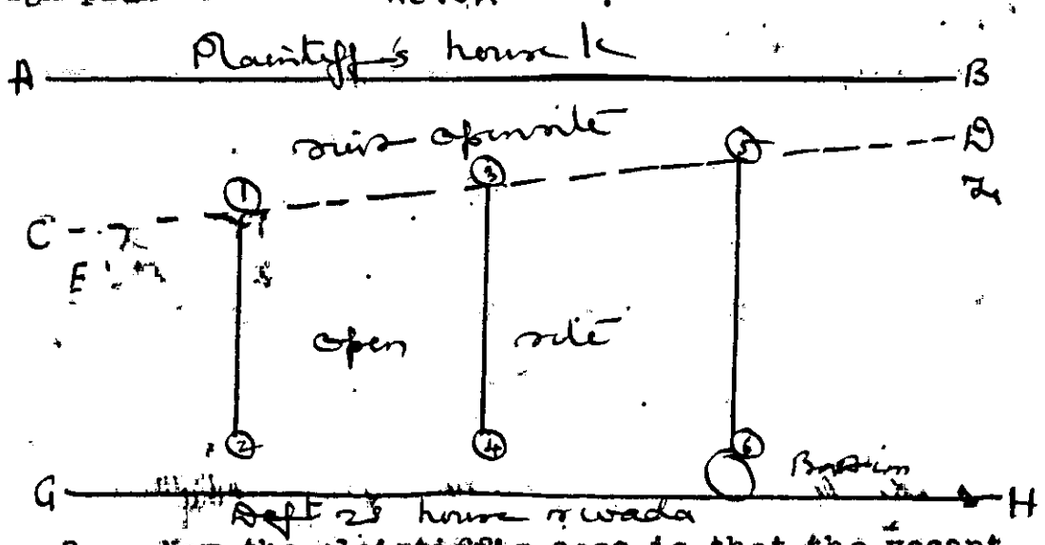
5. No.

6. No.

7. General issue.

Reasons

7. The locus in quo is shown on the following rough plan :



8. Now the plaintiff's case is that the vacant site in dispute marked ABDC is of his ownership and goes along with his house property along AB. He contend that the highway is across the vacant site marked CDFE to the south. As against this, defendant2's case is that the entire vacant-site marked CDHG to the north of his house or vada belongs to him and forms part of his house alongside GH. He explains by saying that there is a highway and that it is along the suit site ABDC.

9. It appears that the Prant Officer held an enquiry and by order dated 4-10-1943 he gave findings that the suit site was not of the ownership of the plaintiff and that it was a highway. The plaintiff preferred an appeal and the Collector by order dated 21-12 1945 dismissed the appeal and confirmed the order of

the Prant Officer. Thereupon the plaintiff approached the Revenue Tribunal and the Ex Revenue Tribunal by order dated 23rd December 1946 dismissed the appeal observing as follows :-

"The dispute in this appeal by Mr. Venkatesh Bhimarao Kulkarni of Nagathan against the order of the Collector of Bijapur, No. N.C.R. 450 dated 21st December 1945, relates to the ownership of the land, marked ABCD in the sketch, dated 15th August 1946 (p. 41, file III).

" In a family partition in 1938, the appellant got a house, shown in the sketch, dated 18th August 1943 (p.25 file I). The appellant opened a window in the southern wall of his house and made mori to allow the drainage water to go out of the house. He then wished to build on the vacant portion beyond the southern wall. The patil of the village objected. The appellant approached the Mamlatdar. His contention was that the land ABCD (sketch p. ~~4~~ 41, File III) belonged to him and that there was a foot path in the open space towards the south of the wall HC. In view of these contentions, the Prant Officer held an enquiry into the appellant's claim under Section 37(2) of the Land Revenue Code .

"The house of the Patil is beyond the open space to the south of the wall HC. The dispute is between the appellant and the Patil, who contends that the open space upto the line BC belongs to him and that the foot path is through the land ABCD. The appellants contention, on the other hand, is that his compound extends upto the line BC and that the foot path is in the open space. The Prant Officer has inspected the site. His inspection has revealed that there are foundations of an old wall deep in the ground along the line HC and that there are old fo ndations at three places perpendicular to the wall HC, which show that there must have been old walls in the

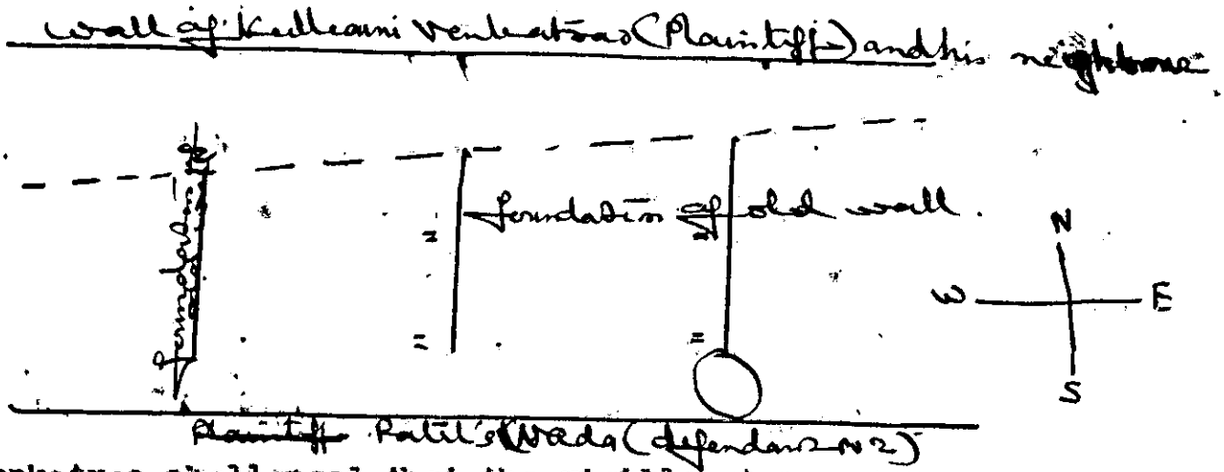
open space also. Beyond the perpendicular foundations, there are bastions to the east and to the west so that there is no possibility of the foot path having existed in the open space to the south of the wall HC. There are also grain pits in the open space. It is common ground that there is a foot path between Mr. Patil's house and the appellant's house. In that case, the only land which could have been used as a foot path is the land in dispute.

"Beyond this circumstantial evidence, there is no satisfactory evidence, oral or documentary, on the record. The Prant Officer, who has seen the witnesses on behalf of both the parties, does not attach any value to their depositions. The document of 1938 relied on by the appellant is a recent document It was the result of a family appartition. Recitals in such a document cannot be given much weight. The doors of the appellant do not open towards the south and the window and the drainage pits have been recently made. The proclamation of the Civil Court and the sale deed of 1913 do not help the appellant. He has failed to establish his claim. In our opinion, the land in dispute is a foot path, vesting in Government. The orders of the Prant Officer and the Collector are correct. The appeal is dismissed."(Exh. 54).

10. As observed already, the Prant Officer regarded the plaintiff's case with disfavour. He visited the site and his notes of local inppection are extracted below :-(Exh. 47)

" The foundations of the old wall are visible and it runs east to west along the wall of Venkatrao Kulkarni at a varying distance of 5 feet commencing from east 10'-& 7" at the place of stone and morter foundation and ending at a distance of 12 feet.

" There are the foundation stones of the old wall running perpendicular at 3 places from the foundation of this long wall towards the Patil's house. To make the matter clear I draw the following sketch.



" Venkatrao challenged that the visible stones were not the stones of the old foundation but ~~the~~ were recently put in to stop the flow of water. I informed him that the challenge was accepted and if after digging the stones for a certain distance it was found that they were not the stones of the foundation of wall, I would respect his credibility otherwise not. On digging the stones to a certain distance, it was found beyond the shadow of doubt that there exist the foundations of an old wall. Anybody inspecting the site will have no two opinions as to whether this is the foundation of the wall or not. Similar is the case with the 3 perpendicular foundations running from this wall towards the Patil's vada."

" I took a round of the house of the Khlkarni, and that of his neighbour. It was found that the main doors of all these houses open on the northern side and not on the southern side. Recently, Venkatrao has opened a door to his house in the western side; so also the neighbour of Venkatrao has bored a hole in his wall recently on the southern side. Both parties admit that there was a lane or path running parallel to the Kulkarni's wall. Each party alleges that the path lay in the area of the other party.

" As regards the ownership of the foundation wall,

29 53

there is overwhelming evidence both circumstantial and documentary that this wall belongs to the Patil. But the Kulkarni claims this foundation as his. It appears to me impossible that this foundation should belongs to the Kulkarri. On the strength of his own challenge disputing that this is not the foundation of a wall but heap of stones recently put to stop flow of water, the Kulkarni cannot claim saying that this is the foundation of his old wall. The Gharbasti map was referred to. It shows that there was a passage between these two houses. But the point for decision is where it lies now. The pleader for Venkatesh wants time to argue the case. Hence final order are withheld."

11. I visited the site in the company of pleaders and parties and my notes of loacal inspection are marked as Exh. 55.

12. Now the evidence consists of documentary evidence oral evidence and the conduct of parties.

13. This brings me to the documentary evidence. It appears that in satisfaction of a decree passed against the plaintiff's father, his house property was put up for sale, and Exh. 41 is a copy of the sale proclamation in connection therewth. It is noticeable that the southern boundary of the plaintiff's house is shown in the sale proclamation (Exh. 41) dated 17-4-1905, as the road. To my mind, Exh. 41 weakens the plaintiff's case on the merits because to the south of the house property is really the suit vacant site which according to the defendants is the "road". The explanation of Mr. Kavi is that after 1905 part of the house which was standing on the suit site fell down. He argued that in 1905 when the sale proclamation (Exh. 41) was issued a building was standing on the suit site., hence the sale proclamation recited that to the south of the suith house was the "road". As

observed already, Exh. 41 is against the plaintiff's version. But if I assume that part of his house was standing on the suit site and that it fell down after 1905, Exh. 41 would advance the plaintiff's case.

14. Thenext document is a copy of the Gharbasti map prepared in 1872 Exh. 42. The original map is also produced before me. The original was soug t to be produced because Mr. Angadi pleader for defendant No.2 argued that the original Gharbasti map was not in fact, and that a portion had been obliterated.

15. I have gone carefully through the original Gharbasti map and the copy marked as Exh. 42. To my mind the portion obliterated does not signify anything. The Gharbasti map Exh. 42 shows that thedefendant's vada extends upto the boundary marked GH in my plan and AB in the plan prepared by the Prant Officer. Consequently, the plea of defendant 2 that his house extended upto the boundary CD is not supported by the Gharbasti map (Ex.42). Mr. Angadi for defendant 2 explained by saying that there was originally a house belonging to defendant 2's pre-decess upto the line CD in my plan and upto AB in the plan prepared by the Prant Officer. According to him that portion of the house standing on the plot C D 2 4 6 fell down prior to the Gharbasti map prepared in 1872. Now if I accept his exp' ehation it follows that the Gharabasti map (Exh. 42) weakens his case on the merits.

16. Now the Gharbasti map does not show the limits of the plaintiff's house. It shows that there was a highway near or along the suit site.

17. As observed already the Gharbasti map was prepared in 1872, some 80 years ago and it is impossible to expect oral evidence in proof of the defendant's version that a house was standing on the plot marked C D 2 4 6

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in my plan.

18. Consequently, I must state that the documentary evidence(Exhs. 41 and 42) are inconclusive and the case has to be decided by an appreciation of the material points disclosed by the evidence and the test of surrounding circumstances. I need not say that my local inspection has largely influenced my determination of the cause.

19. In fairness to both parties, I must, however admit that the suit is on the border line and much depends on the appreciation of the material points. The great fact to be remembered in this connection is that there are trances of a foundation wall along side CD viz., to the south of the suit site. The Prant Office in his notes of local inspection says this:-

" The foundations of the old wall are visible and it runs east to west along the wall of Venkatrao Kulkarni at a varying distance of 5 feet commencing from east 10'-7" at the place of stone and morter foundation and ending at a distance of 12 feet".

20. For the matter of that, it is common ground that there are traces of a house wall originally standing along C.D. That wall was built " of stone and morter" stone and morter were distinctly visible when I visited the site. As against this, the wall of the plaintiff's house along AI is built of stone and mud . This circumstance is to some extent against the plaintiff's version. I say " to some extent" because it is possible and even true that a portion of the home might be built of stone and morter and the rest of the house might be built of stone and mud. But ~~weight-in-a-~~ the avriation is a circumstance that counts its weight in a case of this sort.

21. There are further elements in the case. There are no doors in the wall A.B. If really the plaintiff was making wahivat of the suit site as forming part of his house property, a door would have been opened as a matter of pure probability at some time or other. What was noticeable is that a temporary passage is made in the compund wall near K. But there is no door, and no regular passage.

22. As observed by the Prant Officer, there are foundations of an old wall at three places perpendicular to the wall CD. According to the Prant Officer, these are traces of old walls along 1, 2, 3, 4, 5, 6, . I visited the site in the company of pleaders and parties. Mr.Kavi for the plaintiff submitted that 1, 2, 3, 4, 5, and 6 are really not traces of old walls but that stones had been heaped there in three directions marked 1, 2, 3, 4, 5, and 6 to prevent the mud being washed away by the rains. There is some force in his contention. At the same time, I must say that the methodical way in which there are traces of foundation stones along 1,2, 3, 4, 5, and 6 is an indication that they are really traces of old walls. The absence of traces of walls to the north of CD is significant.

23. Mr.Kavi also argued that the traces of the old foundation are upt the line 2,4 and 6 not touching the plaintiff's Vada along side GH. His point is that if the stones along 1, 2, 3, 4, 5 and 6 were really traces of old foundations, one expected that they would extend upto the wall of his Vada along side G.H. There is considerable force in this contention also. Another point Mr.Kavi took was that the width of the open site CDHG is 66 feet and it is impossible to hold that the entire structure 66 feet wide and across CD 6, 4, 2, would be build upon.

33

24. The fact of the matter is that the defendant owns a spacious house styled vada. There are bastions to the east and to the west. It is possible and even true that he left vacant site across GH and 2,4,6 and constructed an out-house or something of that sort across the site CD, 2,4 and 6.

25. I now turn to the oral evidence. The plainti has examined himself at Exh. 59. He stated that at the division in 1938, the suit site and the adjoining house were allotted to his share. He stated that he is ex the owner of the suit site and that the suit site is higher than the vacant site to the south. In cross-examination he stated that disputes across in 1937 between him and defendant 2. He admitted that he had collected earth and mud. To my mind it is likely that the heap of earth and mud were responsible for the present situation viz., the circumstance that the suit site is higher than the vacant site to the south. As a matter of fact, I observed that the suit site is not level ground. The partition deed referred to in the order of the Revenue Tribunal is a recent document the result of a family partition. Recitals in such a document cannot be given much weight.

26. The defendant has examined himself at Exh.45 and he stated that the plaintiff raised the level of the suit site and in consequence of this people row pass across the site to the south of the suit site, denied the allegations made by the plaintiff in h evidence.

27. Upon the whole, my finding is that the plaintiff is not the owner of the suit site.

28. Another point taken on behalf of the defendants is that the suit is time-barred. The facts

are briefly these:- The Prant Officer passed an order upholding the defendant's contention on 4-10-1943. The applicant preferred an appeal and the Collector dismissed his appeal on 21-12-1945. The Revenue Tribunal dismissed his appeal 23-12-1946. The suit was instituted on 16-1-1948 after giving 6 mont notice to Government.

29. Mr. Angadi put his case in this way : The Prant Officer held an inquiry. The Collector also held an inquiry. The plaintiff should have appealed to the Commissioner. He did not appeal to the Commissioner. On the other hand, he merely file a revision petition before the Revenue Tribunal. His point is that a regular suit should have been instituted in a Civil Court after the expiration of one year from the date of the order passed by the Collector on 21-12-1945. He submits that the plaintiff's application to the Revenue Tribunal was not an appeal within the meaning of section 37(3) of the Land Revenue Code.

30. Now under section 203 Land Revenue Code an appeal shall lie from any decision or order passed by a revenue officer under the Land Revenue Code to that officer's immediate superior or other such decision or order may itself have been passed on appeal from a subordinate officer's decision or order.

31. Section 37 is in these terms :-

(2) Where any property or any right in or over any property is claimed by or on behalf of the Crown or by any person as against the Crown, it shall be lawful for the Collector or a Survey Officer, after full inquiry of which due notice has been given, to pass an order deciding the claim.

(3) Any suit instituted in any Civil Court after the expiration of one year from the date of any order passed

under sub-section (1) or sub section (2), or if one or more appeals have been made against such order within the period of limitation, then from the date of any order passed by the final appellate authority, as determined according to section 204, shall be dismissed(although limitation has not been set up as a defence) if the suit is brought to set aside such order if the relief claimed is inconsistent with such order, provided that in the case of an order under sub-section (2) the plaintiff has had due notice of such order".

32. Section 204 of the Land Revenue Code provides:- "An appeal shall lie to the Provincial Government from any decision or order passed by a Commissioner or by a survey Commissioner, except in the case of any decision or order passed by such officer on appeal from a decision or order itself recorded in appeal by any officer subordinate to him."

33. It is observable that the Revenue Tribunal under section 4 of the Bombay Revenue Tribunal Act, 1939,(Bombay Act XII of 1939) has the samepower as the Government had or could have exercised in such a case Consequently, under Section 207 of the Land Revenue Code, no regular appeal lay to the Revenue Tribunal from the decision of the Collector, the appeal lay to the Commissioner.

34. The question is not free from doubt. It is worthy of note that Section 57(3) refers to <u>any order passed by the final appellate authority.</u> Undeniably, the Revenue Tribunal is the final appellate authority and that final authority dismissed his appeal on 23-12-1946. The suit is brought within one year from the date of the order passed by the Revenue Tribunal. In computin the period of limitation prescribed for a

suit under section 37 of the Land Revenue Code, the period of two months under Section 80 ~~CR~~ C.P. C. should be excluded. My finding, after some hesitation, is that the suit is within time under section 37 of the Land Revenue Code.

35. In the result, the suit is dismissed. The plaintiff to pay the defendant's costs in separate sets.

Sd/ A.C.Sequeira

1-8-1950. Civil Judge, Sr.Dn.,

"True Copy"

61
37

Decree

In the Court of the Civil Judge, Jr.Dn.,
Bijapur.
Civil Suit No. 22 of 1948.

1. Venkatesh Bhimarao Kulkarni,
Age 60 Pensioner of Nagathan Tal.
Bijapur. ... ... Plaintiff.

Vs.

1. The Province of Bombay, through
Collector of Bijapur.
2. Rayanagouda Chandanagouda Patil
Lingayat, age 40, Agriculture of
Nagathan Tal. Bijapur. .. ... Defendants.

Herein the plaintiff begs to submit as under :-

1. An open site measuring 82 feet east west by 10 ½ feet south north situate at Nagathan, Tal. Bijapur surrounded by a public pathway and beyond that Shettopa Talwar's house to the east, a public pathway and beyond that defendant No.2's house to the south, a public pathway to the west and plaintiff's residential house to the north belongs to the plaintiff and is in his possession.

2. The said open space and the adjoining house to the north fell to the share of the plaintiff in a family partition that took place in the year 1938 and since then he is exclusively making wahivat of it. After

the partition he rebuilt the old southern wall of his house by opening a window and a mori in the places in which they pre existed and he wanted to construct a building and a compound wall as well on the open site in qu e tion to which defendant No.2 onjected. He happens to be an owner of a house sit unte on the southern side of s the suit open site with an opposite belonging to the Government measuring about 66 foot intervening and part of which is used as a public road or pathway. He objected sayirg that the entire openspace in front of his house upto the suit open site belongs to him though actually used by the public from time immemorial and not to Government q and that the suit open site belongs to the Government and not to the plaintiff and is used by the public as a way. The plaintiff therefore made an application to the Mamlatdar Tal. Bijapur and he , after an inquiry under Section 37 Land Revenue Code made a report to the Prant Officer N.B. ,Bijapur. Then it was decided on 4-10-1943 against the plaintiff and was held that the suit site belonged to the Government and an appeal was preferred to the Collector Bijapur who confirmed the order of the Prant Officer on 21-12-1945. Ultimately an appeal was preferred to the Rev. Tribunal but the order of the lower Court was confirmed there also on 23-12-1946. Hence plaintiff intends to bring a suit against the above mentioned defendants for declaration that it is of his ownership and in his possession and also for permanent injunction not to disturb the same.

3. The open site in question ever belonged to the plaintiffand his ancestors and they have enjoyed the same from time immemorial .It has a foundation of a wall abutting the pathway now used by the public. There is a small reservior in the suit open site as old as

37

the foundation and the residential house, adjoining the plaintiff's house. This suit site is not in level with adjoining Government site now used by the public nor there are any traces of a pathway on it. Such marks are clearly beyond the site in question. The plaintiff's family has dealt with this property as full owners foever and none else.

4. The suit site has been used by plaintiff and his ancestors for more than 100 years openly, peaceably and without interuption uptil now and hence he is the owner of the said property, in the alternative by adverse possession as well.

5. The cause of action for this suit against defendant No.1 has arisen on 23-12-1946 when the Rev. Tribunal ultimately decided against the plaintiff holding the suit site as belonging to Government. Defendant No.2 is added as a formal arty as he is interested in denying the plaintiff's claim and supporting that of defendant No.1.

6. Notice of this suit under Section 80 C.P.C. is given to defendant No.1 and this suit is filed after the expiration of two month's time since the said notice.

7. This suit is in time as it is filed within one year of the final order by the Rev. Tribunal excluding the time covered by the notice.

8. This suit is filed for declaration that the plaintiff is the owner of the suit site and also for a consequential relief of permanent injunction against both the defendants not to obstruct the peaceful enjoyment of the same and building operations to be undertaken etc., by the plaintiff. Hence Court fee of Rs. 6/- (Section 7-4-C Court fee Act is paid.

The valuation for purposes of jurisdiction and pleaders fees is Rs. 50/-.

9. The plaintiff prays that :-

1. It should be declared that the plaintiff is the owner of the suit open site for the reasons stated in paras 2 to 4 above.

2. A permanent injunction be granted against defendant not to obstruct plaintiff's possession and peaceful enjoyment of the same by him.

3. A permanent injunction be issued to them not to obstruct the building operations on the suit site to be undertaken by plaintiff hence forth.

4. The costs of this suit be granted to plaintiff from the defendants.

"The suit coming before Shri. A.C.Sequeira, Civil Judge, Sr.Dn., Bijapur, this day the 1st of August 1950, in the presence of Shri. R.M.Kavi, pleader for the plaintiff and Shri. K.R.Rao for defendant No.1 and Shri. A.C.Angadi for defendant 2, it is hereby decreed and ordered that :

" In the result, the suit is dismissed. The plaintiff to pay the defendant's costs in separate sets."

Bill of costs.

Plaintiff.		Deft.1		Deft. 2	
1. Plaint .	6- 4-0	Pleaders fee	15- 0-0	Vakalat.	0-10-0
2. Vakalat	0-10-0	Stamps to appli cations-	3-12-0	Pleader's fee	15- 0-0
3. Pleader's fee.	15- 0-0			Process fee	3-0 -0

4. Process fee	5-0-0	---	Costs to Defendant	6-0-0
5. Stamps to Affidavits	4-6-0	---	Stamps to be affixed	5- 8-0
	34- 4-0	16-12-0		17- 2-0

Given under my hand and seal of the Court this day the 1st of August 1960.

Sd- M.R.Patil
Clerk.

Sd- A.R.Sequeira
Civil Judge, Sr.Dn.,
Thane.
19-8-1960

Certified Copy

Dist. Govt. Pleader
Thane

Suits.
Bijapur.
For a declaration of the Plaintiff title to a land which was declared to be of Government's ownership in ~~the~~ an inquiry under section 37(2) of the Lan Revenue Code.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 12812
Bombay Castle, 7th September 1950.

Read Government Resolution ~~No.~~ ~~4487~~ Legal Department, 4487 dated the 23rd April 1949.

In the Court of the Civil Judge, (Senior Division), Bijapur. Civil Suit No. 22 of 1948. Venkatesh Bhimarao Kulkarni ... Plaintiff. Vs. The Province of Bombay ...) Rayangouda Chandaugouda Patil ..) Defendant.	Endorsement from the District Government Pleader, Bijapur, No. 517, dated the 3rd August

1950, stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Bijapur, on 1st August 1950, when the following order was passed :-

" The suit is dismissed. The plaintiff to pay the defendent's costs in separate sets."

Endorsement from the District Government, Pleader, Bijapur, No. 582, dated the 28th August 1950, forwarding uncertified copies of the judgment and decree.

Resolution :- The result of the suit is recorded.

By order of the Governor of Bombay,

original

E.P.Bhamgara,
Additional Assistant Secretary to Government

The Revenue Department,
The Collector of Bijapur,
The Secretary Bombay Revenue Tribuna

Subd for rej
RDC
4/9 AAS.

Subtd after loose
file in St Bij 6/69
DC
1/1 ATS 2/6/69